

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

Kevin Brathwaite,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04-1542-GMS
	)	
Thomas Carroll, Warden, et al.,	)	Trial by Jury Demanded
	)	
Defendants.	)	

**STATE DEFENDANTS' MOTION TO DISMISS**

The State Defendants, by and through undersigned counsel, hereby move this Honorable Court to enter an order dismissing Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12 (b) (6) for failure to state a claim upon which relief can be granted. In support of their Motion, Defendants offer the Memorandum of Points and Authorities filed simultaneously herewith.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters  
\_\_\_\_\_  
Ophelia M. Waters, I.D. #3879  
Deputy Attorney General  
820 North French Street, 6th Floor  
Wilmington, Delaware 19801  
(302) 577-8400  
ophelia.waters@state.de.us  
Counsel for State Defendants

DATE: July 18, 2005

**CERTIFICATE OF MAILING AND/OR DELIVERY**

The undersigned certifies that on July 18, 2005, she caused the attached *State Defendants' Motion to Dismiss* to be delivered to the following persons in the form and manner indicated:

**NAME AND ADDRESS OF RECIPIENT(S):**

Kevin C. Brathwaite  
SBI #315294  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**MANNER OF DELIVERY:**

- ☐ One true copy by facsimile transmission to each recipient
- ☒ Two true copies by first class mail, postage prepaid, to each recipient
- ☐ Two true copies by Federal Express
- ☐ Two true copies by hand delivery to each recipient

/s/ Ophelia M. Waters  
Ophelia M. Waters, I.D. #3879  
Deputy Attorney General  
Carvel State Office Building  
820 N. French Street, 6th Floor  
Wilmington, DE 19801  
302-577-8400  
ophelia.waters@state.de.us